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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 839

HORSMAN DOLLS, INC.,

Appellant,

vs.

STATE OF NEW JERSEY UNEMPLOYMENT COMPENSATION COMMISSION

APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

HERMAN D. RINGLE,
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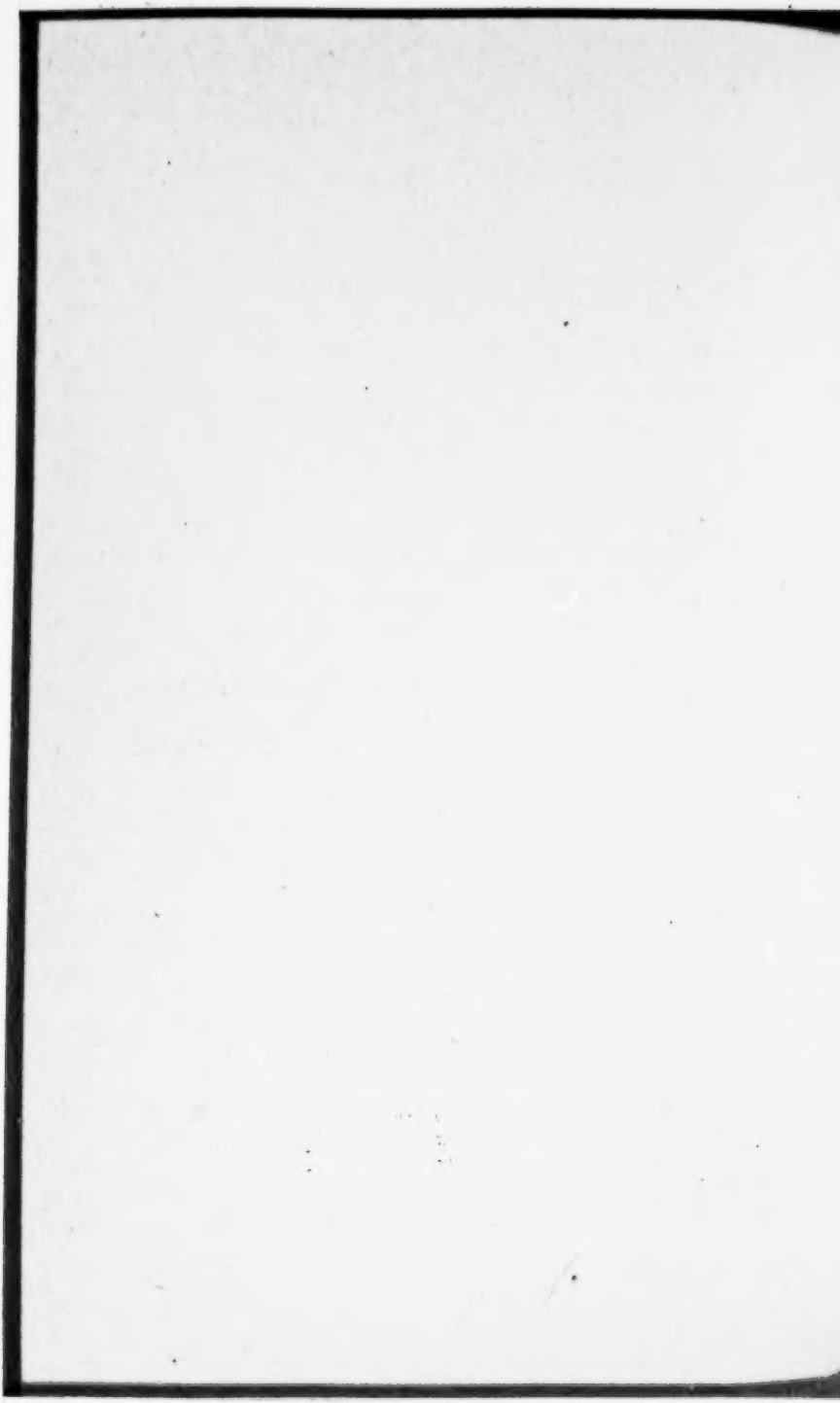
Counsel for Appellee.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 839

HORSMAN DOLLS, INC., A CORPORATION OF NEW JERSEY,
Appellant,

vs.

STATE OF NEW JERSEY UNEMPLOYMENT COMPENSATION COMMISSION,
Appellee

ON APPEAL FROM THE NEW JERSEY COURT OF ERRORS AND APPEALS

APPELLEE'S STATEMENT OPPOSING JURISDICTION AND MOTIONS TO AFFIRM OR DISMISS

Nature of Case

(The appellee will be referred to as the Commission.)

The question presented by this appeal is the validity of an order of the Commission by which the Commission ordered a removal to itself of certain proceedings pending before one of its legal assistants, designated under the Commission's Regulation 10 (Appendix) to sit as a "ref-

eree." In the proceedings the appellant contended that it had been assigned an improper contribution (tax) rate for the year 1942 and requested a redetermination thereof, which necessarily involved its right to a refund of contributions (taxes) paid under protest. The validity of this order was challenged by the appellant and tested in the appellate proceedings before the New Jersey Court of Errors and Appeals. *Horsman Dolls, Inc.* v. *Unemployment &c., Com.*, 134 N. J. L. 77, 45 Atl. (2d) 681.

The appellant's contentions, briefly stated, were: (1) The referee, alone, had the power to conduct the proceedings and make a decision therein; (2) The Commission, itself, was a biased and prejudiced party to the proceedings and could not impartially conduct a hearing and determine the appellant's proper contribution rate or its right to a refund of contributions, and that it could not act in the multiple role of prosecutor, litigant and judge; and (3) The Commission's action violated the appellant's constitutional rights under the "due process" clause of the United States Constitution.

The New Jersey Court of Errors and Appeals held that the New Jersey Revised Statutes 43:21-11 (Appendix) contains a particularized grant of power to the Commission for the accomplishment of the objects of the statute; that the section provides, among other things, for investigations, hearing, swearing of witnesses, depositions, power of subpoena, and appointment of subordinates; that there is no such office as "referee," *eo nomine,* provided for by the statute N. J. R. S. 43:21-1 *et seq.*; that the Commission could appoint a referee to act as a "hearing officer," without power of determination, to compile a record for its consideration, with opportunity for further argument before it; that any power of decision invested in the referee was *ultra vires;* that under N. J. R. S. 43:21-14 (f) (Ap-

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pendix) the power of refund is placed solely in the Commission or Executive Director; that there was no evidence of bias or prejudice on the part of the Commission or any member thereof or that the case had been prejudged; that the Commission or any member thereof did not have a "personal pecuniary interest" which would warrant disqualification; that no authority is found which makes a reference to a subordinate irrevocable.

Statement of Facts

Prior to March, 1941, all hearings, except those involving disputed claims for benefits, with respect to the administration of the Unemployment Compensation Law of New Jersey (R. S. 43:21-1, *et seq.*) were conducted by the Commission and the members thereof (S. C., p. 212, ll. 30-40; p. 251, ll. 14-20). At times, preliminary hearings were conducted by section heads of the Commission with the right to a final hearing before the Commission itself. The procedure led to some confusion and criticism (S. C., p. 4, ll. 35-40; p. 246, ll. 24-41; p. 247, ll. 2-3). A consideration of the foregoing by the Commission at its meetings held on December 5, 1940, and January 10, 1941, resulted in the adoption of Regulation 10 (Appendix) which provided that hearings respecting "any question of coverage, or status, or liability for contributions, penalties and interest or the amount of an assessment, or of reporting" shall be held before a referee to be appointed by the Executive Director (S. C. pp. 4-10). Administrative convenience prompted the adoption of Regulation 10 (S. C. p. 211, ll. 7-10) under the power granted by N. J. R. S. 43:21-11 (Appendix).

A legal assistant of the Commission was appointed to act as a Referee by the Executive Director in March, 1941, under the provisions of Regulation 10, and functioned there-

under (S. C. p. 89, ll. 23-40; p. 100, ll. 3-13; p. 111, ll. 3-10). It was the intention of the Commission that an employee or employees of the agency should be designated for that purpose and that the Executive Director should make the designation as he had greater personal knowledge of the qualifications of the employees (S. C., p. 247, ll. 15-40; p. 248, ll. 3-16).

On March 9, 1943, the appellant filed a petition for hearing "in accordance with Regulation 10" (S. C., pp. 38, 39; p. 226, ll. 13-36) and a hearing was scheduled before the referee to commence on April 15, 1943 (S. C. p. 39, ll. 20-40; p. 40). The appellant contended that it had been assigned an improper contribution rate because improper benefit charges had been made to its account; the petition was also construed as an application for a refund of contributions paid under the assigned rate (N. J. R. S. 43:21-14 (f)) (Appendix).

The hearings before the referee actually commenced on May 14, 1943, and continued hearings were held on four other days, concluding on November 1, 1943. The appellant's attorney then submitted a brief to the referee but the attorneys for the Commission, in accordance with the well-settled practice (S. C., p. 233, ll. 20-31) did not submit a brief.

In January, 1944, the referee saw Mr. Frank T. Judge, Acting Executive Director of the Commission, at his office and requested a conference in the presence of Mr. Malloy and Mr. Ringle, which request was granted. (S. C., p. 149, ll. 19-32; p. 167, ll. 30-32; p. 169, ll. 3-14; p. 235, ll. 36-39). The legal phase of the issues only was discussed. (S. C., p. 77, ll. 18-24; p. 150, ll. 8-23). Discussions by the attorneys and the referee with respect to cases were common (S. C., pp. 107, 108) as the referee sat as a fact-

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finding hearer (S. C., p. 105, ll. 18-24); the views of the attorneys of the Commission were impartial and often supported the position of the employer or employing unit, all of which was testified to by the referee (S. C., pp. 107, 108, ll. 3-11).

With respect to the respondent's case the referee testified as follows:

> "Q. Well, what sort of pressure was brought to bear upon you by Mr. Judge?"
>
> "Q. (Question read by the reporter.) A. Well, I wouldn't say any pressure was brought upon me except we were having these conferences. I wouldn't say there was any pressure; I was not told to decide in favor of the Commission." (S. C., p. 88, ll. 25 and 26, ll. 38-40; p. 89, ll. 3 and 4).
>
> "Q. Mr. Nowels, were you ever directed by Mr. Judge or any other representative of the Commission to make a decision in favor of the Commission in these proceedings? A. No." (S. C., p. 94, ll. 10-14).
>
> "Q. Did any representative of the Commission or any Executive of the Commission direct you to write a decision other than on the merits? A. No." (S. C., p. 97, ll. 36-39).

On July 14, 1944, the Commission voted to remove the case to itself for the reasons stated in the record of the minutes of its meeting held on that day (R., pp. 15-19). Regulation 10 (Appendix). Six Commissioners present voted for the order. One Commissioner was absent. The reasons which prompted the order of removal, as stated therein, briefly are:

1. The importance of the case as a representative one of more than 350;
2. The amount of public funds involved;
3. The need for a speedy disposition of the case;

4. The growing publicity of the case;

5. The intimation of a widespread soliciting activity by attorneys and others.

There is no proof of any bias or prejudice on the part of the Commission or any member thereof, nor even a suggestion of bias or prejudice. With respect to the foregoing the referee testified that he had never discussed the case with any of the Commissioners except Commissioner Ernest Eger, and that the discussions with Commissioner Eger did not pertain to the merits of the case (S. C., p. 90, ll. 24-41; p. 91, ll. 3-9; p. 92, ll. 32-40; p. 93, ll. 3-50).

Commissioner Eger testified as follows:

"Q. Now, Commissioner, have you prejudged the Horsman Dolls case on the merits? A. No, sir; I don't know a thing about it.

"Q. And is there any reason why you will not decide the case impartially after you have read the record and consider it on the merits? A. None whatever.

"Q. And if on the facts and on the merits of the case a determination should be made in favor of the position taken by Horsman Dolls, Inc., wouldn't you vote in favor of such a determination? A. Yes, indeed.

"Q. So that at this moment there is no reason to believe, is there, Commissioner, that the Commission as a body may not, after considering this case on the merits, render a decision favorable to the position of Horsman Dolls, Inc.? A. I think every Commissioner is impartial on the matter and that he will decide and vote for a decision in line with his own judgment of the case after hearing all of the facts developed.

"Q. So that a decision in all probability at this moment, as far as we can look ahead, could be made either for or against the position taken by Horsman Dolls? A. I think so." (S. C., p. 213, ll. 11-35.)

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And Commissioner Eger had previously testified as follows:

> "Q. Well, what was the importance of this case, therefore, that summoned you up from Atlantic City, with the referee writing a decision in favor of an employer? A. Well, frankly—possibly this is not admissible, but had I been chairman at the inception of this case and had I known of the case, I could have formed my own conclusions as to its importance; and frankly, I don't think it would have ever gone to Nowels as a hearer.
>
> "Q. That is what you might have done had you known when the case first started? A. I am certain I would have done that.
>
> "Q. Would it have gone to anyone else to hear it? A. No; it would have gone to the Commission" (S. C., p. 206, ll. 24-38).

Commissioner Murphy gave similar testimony to similar or identical questions (S. C., p. 189, ll. 30-40; p. 190, ll. 3-40; p. 191, ll. 3-8); and Commissioner Homan gave similar testimony to similar or identical questions (S. C., p. 201, ll. 20-41; p. 202, ll. 3-8).

The only attorney who had discussed the case with any Commissioner for the purpose of inducing or suggesting a result such as a settlement was the appellant's counsel who on several occasions had talked to Commissioner J. Albert Homan (S. C., p. 192, ll. 24-31).

The referee had performed his duties only under the provisions of Regulation 10 and had never heard any cases involving disputed "claims for benefits" but had heard only those involving issues presented by employers or employing units with respect to their status, liability, etc. (S. C., p. 234, ll. 10-14).

ARGUMENT

Point I

Reasons in Support of Motion to Affirm Judgment of the Court of Errors and Appeals

1. The appellant's appeal to this honorable court is based upon its interpretation of N. J. R. S. sections 43:21-10 (b) and 11 (Appendix). It contends that the Commission, under the aforementioned sections, must appoint an independent judicial tribunal to hear all cases affecting status, liability, refunds, etc.; that this was done by the appointment, under Regulation 10 of the Commission, of the referee; and that the right to remove cases as provided for in the Regulation was without statutory authority. This interpretation of the statute was repudiated by the New Jersey Court of Errors and Appeals.

Horsman Dolls, Inc. v. *Unemployment &c. Comm.*, 134 N. J. L. 77, 45 Atl. (2d) 681.

With status and liability as a predicate the agency is authorized, under the tests and definitions prescribed in the statute, to determine its own organization and methods of procedure, make investigations, subpoena witnesses and records, administer oaths, promulgate rules and regulations appropriate to the matters covered by the statute in order to administer the law and carry its object into effect, and to exercise a sound discretion in making determinations (N. J. R. S. 43:21-11, 14 and 19(i)(6)) (Appendix). *Horsman Dolls, Inc.* v. *Unemployment &c. Comm., supra.*

In *American Grocery Co.* v. *A. & W. Wine and Liquor Corp.*, 131 N. J. L. 383, 36 Atl. (2d) 757, the Court held that the Unemployment Compensation Commission of New Jersey is by statute constituted the agency of the State for

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determining the liability to pay and the amount of contributions.

As pointed out by the New Jersey Court of Errors and Appeals, under subsection N. J. R. S. 43:21-14(f) (Appendix), the Commission or Executive Director is solely and exclusively vested with the power to determine the appellant's right to a refund. This is a power that cannot be delegated and was not delegated by Regulation 10.

Without specific statutory authority, as pointed out by the New Jersey Court, the adjudicating function in any instance cannot be delegated by the Commission.

Morgan v. *U. S.* (1935), 298 U. S. 468;
Morgan v. *U. S.* (1937), 304 U. S. 1;
U. S. v. *Morgan* (1938), 307 U. S. 183;
U. S. v. *Morgan* (1940), 313 U. S. 409.

The construction of the statute adopted by the highest appellate court of the State of New Jersey and its interpretation of the scope of the law must be accepted as conclusive.

Osborne v. *Florida*, 164 U. S. 650, 654;
Missouri ex rel. Hurwitz v. *North*, 271 U. S. 40;
Neblett v. *Carpenter*, 305 U. S. 297;
Alton R. Co. v. *Illinois Commerce Commission*, 305 U. S. 548;
Williams v. *Kaiser*, 323 U. S. 471, 473.

The construction given by courts and administrative bodies to the rules and regulations promulgated by them is controlling, and particularly when their interpretation is a matter in issue in another court.

N. L. R. B. v. *J. S. Popper, Inc.* (C. C. A. 3d), 113 F. (2d) 602;
Morgan Stanley & Co. v. *Securities & Exchange Commission* (C. C. A. 2d., 1942), 126 F. (2d) 325.

2. The fact that an administrative body appears to act in the multiple role of prosecutor, litigant and judge does not violate Constitutional requirements but conforms to accepted judicial standards. It has never, heretofore, been held, in the absence of a specific statutory requirement to that effect, that an administrative body must segregate its quasi-judicial functions from its executive functions and vest the former in an independent tribunal. It may properly delegate the hearing of cases to a "hearing officer" for the purpose of compiling a record, provided that the adjudicating function is not delegated.

Morgan v. *U. S.* (four cases), *supra;*

Securities & Exchange Commission v. *Jones,* 298 U. S. 1;

N. L. R. B. v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1, 25, 49;

Plapao Laboratories, Inc. v. *Farley,* 302 U. S. 732;

Opp Cotton Mills, Inc. v. *Administrator, Etc.,* 312 U. S. 126;

Endicott Johnson Corp. v. *Perkins,* 317 U. S. 501;

California Lumbermen's Council v. *Federal Trade Commission,* 312 U. S. 709;

N. L. R. B. v. *Weirton Steel Co.* (C. C. A. 3d), 135 F. (2d) 494, 496.

All decisions of the Commission may be reviewed in certiorari proceedings before the Supreme Court. This is not only provided for in section 14 of the statute but has been settled by judicial pronouncements. A few of the many decisions which have affirmed or reversed the Commission's decisions may be named:

Fuller Brush Co. v. *Unemployment Compensation Commission,* 124 N. J. L. 487, aff'd 126 N. J. L. 368;

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Provident Mutual Etc. Co. v. *Unemployment Compensation Commission* (Errors and Appeals), 126 N. J. L. 348;

Milrose Co., Inc. v. *Unemployment Compensation Commission*, 126 N. J. L. 441;

Raines v. *Unemployment Compensation Commission*, 319 U. S. 757.

3. The Commission or any member thereof is not biased or prejudiced. This is so obvious from the record as disclosed in the statement of facts herein that no further comment is necessary. We do, however, direct attention to the impropriety of the examination conducted by the appellant in the court below when it subpoenaed the members of the Commission and subjected them to examination for the purpose of probing their mental processes. Such a practice was denounced in an analogous situation by this Honorable Court in the case of *U. S.* v. *Morgan*, 313 U. S. 409.

Point II

Reasons in Support of Motion to Dismiss the Appeal

1. The presence of a substantial Federal question is essential to sustain jurisdiction in this Honorable Court. If the questions presented are plainly unsubstantial, jurisdiction is wanting.

Levering & Garrigues Co. v. *Morrin*, 289 U. S. 103, 105.

A claim of unconstitutionality is unsubstantial where (a) it is "obviously without merit," or (b) "its unsoundness so clearly results from the previous decisions of this Court as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy."

Ex Parte Poresky, 290 U. S. 30, 32;
Levering & Garrigues Co. v. *Morrin, supra.*

There is no section of the Unemployment Compensation Law of New Jersey which is challenged as being unconstitutional, nor was such a challenge made in the courts below. The challenge of the appellant that the Commission's action contravened the "due process" clause was based solely upon the appellant's erroneous interpretation of the statute.

2. The appellant has no constitutional right to a particular form of remedy.

Neblett v. *Carpenter, supra.*

3. Every Constitutional issue attempted to be raised by the appellant has been explicitly foreclosed by the decision of the New Jersey Court of Errors and Appeals and the previous decisions of this Court, as set forth in Point I herein. For the sake of expediency the citations set out therein will not be repeated.

4. It is respectfully submitted, therefore, that the Constitutional questions urged by the appellant have been so plainly foreclosed by the decisions referred to, hereinbefore, as to leave no room for real controversy, and the appeal, if the judgment of the court below is not affirmed, should be dismissed for want of a substantial Federal question.

Zucht v. *King,* 260 U. S. 174, 176;
McArthur v. *U. S.,* 315 U. S. 787.

Motion to Affirm Judgment of the New Jersey Court of Errors and Appeals

Therefore, comes now the appellee herein, by his attorney, and moves the Court to affirm the judgment from which the appeal in the above entitled cause has been taken, on the

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ground that it is manifest that every question on which the decision of the cause depends has been so explicitly foreclosed by the previous decisions of this Court as to render further argument thereof unnecessary.

In the alternative:

Motion to Dismiss the Appeal

Therefore, comes now the appellee herein, by his attorney, and moves the Court to dismiss the appeal for want of a substantial Federal question.

HERMAN D. RINGLE,
Attorney and Counsel for Appellee;
CHARLES A. MALLOY,
Chief Counsel.

Dated: August 21, 1946.

APPENDIX

"N. J. R. S. 43:21-10. UNEMPLOYMENT COMPENSATION COMMISSION.

(b) Executive director. The commission shall appoint an executive director who shall be the chief executive and approval officer of the commission and its official agent for all purposes, and who shall hold office at its pleasure. He shall give his full time to the duties of this office, shall be paid a suitable salary to be fixed by the commission and shall have general charge and supervision of the work of all departments of the commission as well as any subdivisions thereof.

It shall be the duty of the executive director to administer this chapter with the advice of the commission; and to that end, the executive director shall have the following duties and powers:

(1) To formulate necessary rules and regulations, subject to approval by the commission.

(2) To appoint and fix the compensation of members of the staff, subject to approval by the commission and subject to the provisions of subsection (d) of section eleven of this chapter.

(3) To make such expenditures as are necessary in the discharge of his functions hereunder as provided for in the budget to be approved annually by the commission, to make requisitions for any funds provided by the Federal government for administration of this chapter, and he is hereby authorized to draw vouchers on the administration fund for the purpose of administering this chapter.

(4) To draw vouchers upon the unemployment compensation fund and the appropriate accounts therein for the payment of benefits.

(5) To delegate to other persons any of the powers conferred upon him by this chapter, so far as is reasonably necessary.

(e) Powers and duties. The commission shall have the following specific powers and duties:

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(1) To designate its chairman.

(2) To study the operation of this chapter and from time to time prepare recommendations to the Governor and Legislature with respect to any improvements which might be desirable.

(3) To make rules and regulations governing its own procedure.

(4) To advise the executive director and other members of the commission staff with particular respect to policies and procedures.

(f) Quorum. Any four commissioners shall constitute a quorum. No vacancies shall impair the right of the remaining commissioners to exercise all of the powers of the commission."

"N. J. R. S. 43:21-11. ADMINISTRATION.

(a) Duties and powers of the commission. It shall be the duty of the commission to determine all matters of policy; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end or to administer this chapter; provided, that the commission may delegate such power and authority to the executive director subject to their ultimate supervision and control. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this chapter, which the commission shall prescribe. The commission shall determine its own organization and methods of procedure in accordance with the provisions of this chapter, and shall have an official seal which shall be judicially noticed. Not later than the first day of February of each year, the commission shall submit to the Governor a report covering the administration and operation of this chapter during the preceding calendar year and shall make such recommendations for amendments to this chapter as the commission deems proper. Such report shall include a balance sheet of the moneys in the fund in which there

shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor and the Legislature, and make recommendations with respect thereto. The commission shall make a study of the problem of paying partial benefits for partial unemployment.

(b) Regulations and general and special rules. General and special rules may be adopted, amended, or rescinded by the commission. General rules shall become effective ten days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this State. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the commission and shall become effective in the manner and at the time prescribed by the commission.

(c) Publication. The commission shall cause to be printed for distribution to the public the text of this chapter, the commission's regulations and general rules, its annual reports to the Governor, and any other material the commission deems relevant and suitable and shall furnish the same to any person upon application therefor.

(d) Personnel. Subject to other provisions of this chapter, the commission is authorized to appoint (subject to the provisions of Title II, Civil Service), fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis from lists of eligible persons prepared by the Civil Service Commission, in accordance with

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the provisions of Title II, Civil Service, except that any attorney, now or hereafter in office or position of legal assistant for the commission, shall be placed in the exempt class of the civil service and thereafter shall not be subject to removal except for cause and then only in accordance with the provisions of Title II, Civil Service; provided, however, that nothing herein shall be construed to apply to any attorney designated as special counsel in accordance with the provisions of sections 43:21-6, subsection (h), and 43:21-17. The commission shall not employ or pay any person who is an officer or committee member of any political party organization. The commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this chapter, and may in its discretion bond any person handling moneys or signing checks hereunder.

(e) Advisory councils * * *.

(f) Employment stabilization * * *.

(g) Records and reports * * *.

(h) Oaths and witnesses. In the discharge of the duties imposed by this chapter, the chairman of an appeal tribunal and any duly authorized representative or member of the commission, the executive director or any deputy director thereof or member of the board of review shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter. Witnesses subpoenaed pursuant to this section shall in the discretion of the commission be allowed fees at a rate to be fixed by it. Such fees shall be deemed a part of the expense of administering this chapter.

(i) Subpoenas. In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person

guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission or its duly authorized representative, or the board of review, shall have jurisdiction to issue to such person an order requiring such person to appear before the board of review or a member thereof, a commissioner, the commission, the executive director, or his duly authorized representative, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do, in obedience to a subpoena of the commission or of the board of review shall be punished by a fine of not more than two hundred dollars ($200.00) or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(j) Protection against self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commission or the board of review or in obedience to the subpoena of a member of the commission or the executive director thereof, or any duly authorized representative of the commission in any cause or proceeding before the commission, the board of review or a member thereof, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

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"N. J. R. S. 43:21-14. Collection of Contributions.

(f) Refunds. If not later than one year after the date on which any contributions or interest thereon became due, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the commission or executive director shall determine that such contributions or interest or any portion thereof was erroneously collected, such employer shall be allowed to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made the said amount shall be refunded, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the initiative of the commission through the executive director."

"N. J. R. S. 43:21-19. Definitions.

(i)(6) Services performed by an individual for remuneration shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the commission that

(A) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and

(B) such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) such individual is customarily engaged in an independently established trade, occupation, profession or business."

"Regulation 10. Referee and Commission Hearings.

Any written notice of determination by a representative of this Commission, as to any question of coverage, or status, or liability for contributions, penalties and interest

or the amount of an assessment, or of reporting, shall be deemed final, unless any party with an interest in the matter shall make written request for a hearing within twenty days after receipt of the notification, or thereafter upon good cause shown.

Upon receipt of the request for hearing, the Director of Contributors' Service shall supply necessary forms of 'Petition for Hearing' which shall be returned to him within ten days.

All hearings shall be held before a Referee or Referees, designated by the Executive Director in accordance with provisions of Section 10(b) of the Unemployment Compensation Law.

Upon the filing of the 'Petition for Hearing,' copies shall be furnished to the Referee and the Chief Counsel.

The Referee shall acknowledge the receipt of the 'Petition for Hearing' by mailing a 'Notice of Hearing' to the parties concerned. A copy of such notice shall be furnished to the Chief Counsel. All hearings shall be promptly scheduled.

The 'Notice of Hearing' shall be sent at least ten days in advance, to the parties with an interest of record specifying the place, date, and time of hearing.

The Referee shall preside at and conduct the proceedings necessary for a determination of any and all issues. He shall have the power to issue subpoenas to compel the attendance of witnesses, production of books, records, or memoranda necessary as evidence. He shall have the power to administer oaths, take depositions, take testimony, examine and cross-examine all witnesses, and do such other acts as may be necessary for the hearing and determination of the issues referred, or involved. The Chief Counsel, his representative, or any qualified representative of the Commission shall have the right to appear at any hearing and examine and cross-examine any witnesses and evidence produced.

All hearings shall be conducted in an informal manner. A technical observance of the rules of evidence shall not be required. The testimony shall be confined to developing the facts pertinent and relevant to the issues. Stipulations

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in writing of facts agreed upon may be entered into and made a part of the record.

A complete stenographic record of the hearing shall be made and, if necessary, transcribed, and the parties furnished a copy.

At the conclusion of the hearing, or thereafter, oral argument upon both law and facts may be presented or required. The Referee may request or permit the filing of briefs or written memoranda and fix the time within which they may be submitted.

The Referee shall report his findings of facts together with his determination and decision in writing to the Executive Director not later than thirty days, except where exceptional circumstances warrant otherwise, after the conclusion of the hearing or the submission of written arguments. Copies of the finding of facts, determination and decision shall be supplied or mailed to all parties, including any Bureau or Unit of the Commission interested.

Any interested party may, within ten days after receipt or mailing of the finding of facts, determination and decision of the Referee, file a petition for review or a hearing de novo by the Commission.

The Executive Director or the Commission may, in his or its discretion and on his or its own motion, affirm, modify or set aside any findings of facts, determination and decision of a Referee, on the basis of the evidence and testimony previously submitted, or upon additional evidence or testimony.

The Commission may authorize any member or members to preside at and conduct any hearing before it by way of review or otherwise.

The Executive Director or the Commission may remove to himself or itself for determination, any proceeding before a Referee.

The Executive Director or the Commission shall be furnished with the necessary copies of the record and of the findings of facts, determination and decision of the Referee where a Petition for Review or a hearing de novo has been filed or the proceedings removed.

The Executive Director or the Commission shall give written notice of the time and place for review or hearing de novo.

The proceedings before the Executive Director or the Commission shall be conducted in the same manner and with the same procedures as before the Referee. Briefs or written memoranda may be presented or requested and submitted within a time which may be fixed by the Executive Director or the Commission.

The decision of a majority of the Commission shall control. The minority may file a dissenting opinion. Copies of all findings of fact, determinations and decisions and opinions shall be supplied or mailed to all interested parties.

The decision or determination or ruling of the Executive Director or of the Commission shall become final ten days after notification or mailing thereof; applications or requests for reconsideration or redetermination may be made within the ten-day period, or thereafter upon good cause shown. No decision, determination or ruling of the Executive Director or of the Commission shall be suspended or held in abeyance, except when an application or request for reconsideration or redetermination has been allowed or granted.

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